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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,673	09/30/2003	Eric Daniel Andre Jeandemange	2003.1 - Jeansdemange.Eri	5001

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EXAMINER

SZUMNY, JONATHON A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 02/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/674,673

Applicant(s)

ANDRE JEANDEMANGE ET AL

Examiner

Jon A Szumny

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) 3-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

This is the second office action for application number 10/674,673, CD Stand, filed on September 30, 2003.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

Claims 3-7 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent number D494,381 to Ruscitto.

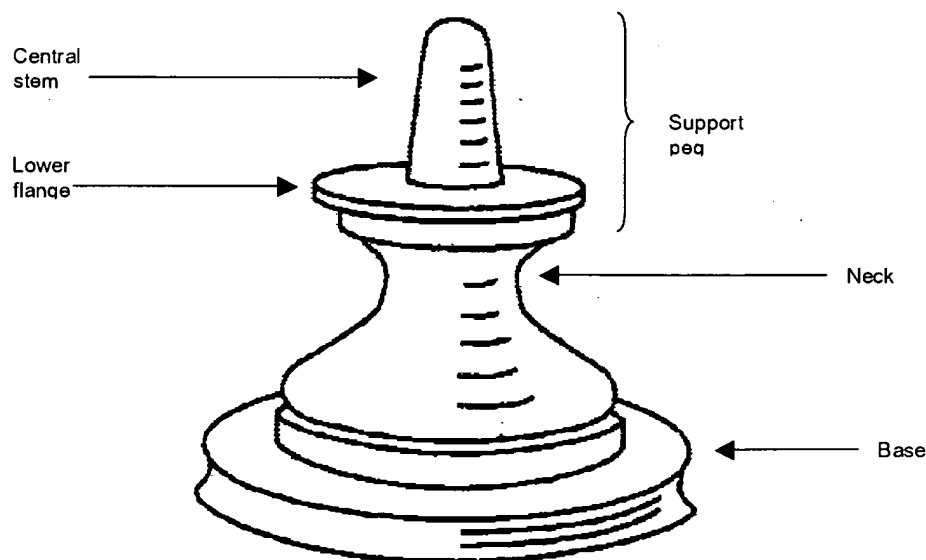


FIG. 1

Ruscitto '381 teaches a stand (above) comprising a weighted base (above, it inherently has some weight), at least one elongated neck (above), and at least one flanged support peg (above) having a central stem (above) and a lower flange (above); wherein the base, neck and flanged support peg are an integrated singular stand with the base substantially larger than the neck, wherein the support peg has a smooth tapered central stem, wherein the stem could *inherently* hold a stack of CDs through respective central holes in the stack, wherein the lower flange could *inherently* be slightly larger than the central holes of the stack, wherein stand could *inherently* support the stack at an angle/angle of thirty degrees.

Claim Rejections - 35 USC § 103

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ruscitto '381 in view of U.S. Patent number 5,341,942 to James, Jr.

Ruscitto '381 teaches the previous invention wherein the base, neck and peg are an integrated singular structure, but fails to specifically teach them to be *cast*. Nevertheless, James, Jr. '942 divulges a stand (figure 1) for holding CD-like objects wherein the stand is constructed from a single integral piece of material that is cast (column 2, lines 63-67). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the base, neck and base as a single integrated structure *via casting* as in James, Jr. '942 since it is well known in the art that doing so is common process.

Response to Arguments

Applicant's arguments filed January 3, 2005 have been fully considered but they are not persuasive.

On the bottom of page 3 of the remarks, the applicant contends that Ruscitto '381 fails to teach the manner of maintaining a disk, and makes no reference to the invention being "*adapted to hold a stack of CDs through respective central holes in the stack of CDs and having a lower flange adapted to be slightly larger than the holes, and adapted to support the stack of CDs at an angle.*"

In response to applicant's argument that Ruscitto '381 fails to teach the above-mentioned features of claim 1, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Clearly, by absolutely no stretch of the imagination, the invention of Ruscitto '381 could perform the above-mentioned functions. A stack of CDs could surely *inherently* be held via the support peg of Ruscitto '381; the lower flange could clearly *inherently* be slightly larger than the central holes of the stack of CDs; and, clearly, the stand could *inherently* support a stack of CDs at an angle, or an angle of 30 degrees (from claim 2), if one side of the hole of a stack of CDs was positioned at a higher position on the stem than an opposite side of the hole of the stack of CDs, and allowed to rest thereon.

Art Unit: 3632

On the top of page 6 of the remarks, the applicant discusses in detail various aspects of James, Jr. '942, none of which were gleaned by the Examiner in this office action. As mentioned in the 35 U.S.C. 103 (a) rejection of claim 2, the Examiner utilized the stand of James, Jr. '942 because it is a stand for holding CD-like objects wherein the stand is constructed from a single integral piece of material that is cast. It is well known in the art to ordinary artisans that casting is a common and efficient process, and James, Jr. '942 clearly teaches such a feature. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, because James, Jr. '942 is a stand for holding CD-like objects, and the stand is cast which is a well known process in the art, there is in fact suggestion to combine the references.

On the bottom of page 6, the applicant alleges that Ruscitto '381 fails to teach a weighted base. The Examiner surely disagrees. The base of the stand of Ruscitto '381 inherently has *some* weight, and thus it is a weighted base. The applicant goes on to say that Ruscitto '381 doesn't have the various features of claim 2, basically because such features were not in the disclosure (a presumably written disclosure). A feature need not be explicitly written out such as "at least one elongated neck," "at least one flanged CD support peg," etc. in a prior art reference in order for that reference to meet all limitations of the claim. This is a futile argument. Any ordinary artisan looking at what the Examiner has labeled, for instance, the "neck" in Ruscitto '381 would

Art Unit: 3632

surely recognize that such a feature could be called a “neck,” even though the word “neck” is not located in the patent.

In response to applicant's argument that Ruscitto '381 and James, Jr. '942 are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Octiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, clearly, since both Ruscitto '381 and James, Jr. '942 concern holders/stands for disks, as is what the present invention concerns, they are not nonanalogous art.

On the bottom of page 7 and top of page 8, the applicant discusses “attaching the Ruscitto patent to the outer surface of James,” “having a single disk on each peg of the Ruscitto patent attached to the James patent,” and the “groove in the James patent.” None of these features were claimed, and the Examiner has not used any of these features in this office action, so it is not understood why the applicant is discussing such features. They are totally irrelevant to the present discussion. To reiterate, the Examiner only gleaned the fact that the stand of James was “cast” in modifying the stand of Ruscitto.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3632

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (703) 306-3403. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

A handwritten signature in black ink, appearing to read 'Jon Szumny', with a stylized flourish extending to the right.

Jon Szumny
Patent Examiner
Technology Center 3600
Art Unit 3632
January 27, 2005